

David A. LaFuria

8300 Greensboro Dr.
Suite 1200
Tysons, VA 22102

dlafuria@fcclaw.com
(703) 584-8666
WWW.FCCLAW.COM



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Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Connect America Fund
WC Docket No. 10-90

Universal Service Reform – Mobility Fund
WT Docket No. 10-208

Dear Ms. Dortch:

On behalf of Cellular South, Inc. d/b/a C Spire, NE Colorado Cellular, Inc. d/b/a Viaero Wireless, Smith Bagley, Inc., East Kentucky Network, LLC d/b/a Appalachian Wireless, Nex-Tech Wireless, LLC, Union Telephone Company d/b/a Union Wireless, Pine Cellular Phones, Inc. and Cellular Network Partnership, d/b/a Pioneer Cellular (collectively, “LLGS Carriers”), we write to discuss the studies performed by ClearSky Technologies (“ClearSky”) and CostQuest Associates (“CostQuest”) demonstrating that the FCC Form 477 network deployment data disseminated by the Commission does not comply with the information quality guidelines issued by the Office of Management and Budget (“OMB”),¹ and implemented by the Commission.²

We also discuss below a challenge process jointly proposed by AT&T and others on January 30, 2017,³ and substantially revised on February 9, 2017 (“Joint Proposal”).⁴ The revised proposal calls for the Commission to employ a complicated “data improvement process” to verify coverage and to determine the areas that are eligible for Mobility Fund Phase II (“MFII”) support.

¹ *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies*, 67 Fed. Reg. 8452 (2002) (“OMB Guidelines”).

² *Implementation of Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Pursuant to § 515 of Public Law No. 105-554*, 17 FCC Rcd 19890 (2002) (“FCC Guidelines”).

³ See Letter from Douglas J. Minster, Mary L. Henze & Brian Gelfand to Marlene H. Dortch, WC Docket No. 10-90 (Jan. 30, 2017).

⁴ See Letter from Douglas J. Minster, Mary L. Henze & Brian Gelfand to Marlene H. Dortch, WC Docket No. 10-90 (Feb. 9, 2017) (“Feb. 9 Letter”).

Under the revised proposal, that process would start with “detailed FCC data submission specifications that all parties can and *must* follow.”⁵

ClearSky and CostQuest Studies.

The results of the ClearSky study dated October 21, 2016 were presented to the Commission by the Competitive Carriers Association and United States Cellular Corporation (“U.S. Cellular”) on October 26, 2016.⁶ U.S. Cellular presented the CostQuest study results to the Commission on October 27, 2016.⁷

The Commission has proposed to use data collected in the Form 477 process to identify areas that will be eligible for MFII support.⁸ Dissemination of the data for that purpose obviously will have a “clear and substantial impact on important public policies,” as well as “important private sector decisions.”⁹ Accordingly, the Form 477 data constitutes “influential scientific, financial, or statistical information” under the *OMB Guidelines*.¹⁰ *Id.*

The ClearSky and CostQuest studies establish that the Form 477 data does not satisfy the reproducibility standard that is applicable to influential information under the *OMB Guidelines*.¹¹ The studies also show that the Form 477 data does not serve to accurately identify the geographic areas that should be eligible for MFII support.

Until the Commission mandates a uniform methodology for determining and reporting mobile broadband coverage that is based on sound RF engineering principles and is subject to reasonable verification, wireless carriers will continue to report Form 477 data that effectively overstates the extent of their broadband coverage. LLGS Carriers hereby request that the Commission correct the Form 477 data that it has disseminated by requiring wireless carriers to

⁵ *Id.* at 6 (emphasis in original).

⁶ See Letter from Trey Hanbury to Marlene H. Dortch, GN Docket No. 12-264 (Oct. 25, 2016), <https://www.fcc.gov/ecfs/filing/10280176023122>.

⁷ See Letter from David LaFuria to Marlene H. Dortch, WC Docket No. 10-90 (Oct. 27, 2016), <https://ecfsapi.fcc.gov/file/10250110228195/CCA%20et%20al.%20Ex%20Parte%2010.25.16.pdf>.

⁸ See *Connect America Fund*, 29 FCC Rcd 7051, 7128 (¶ 241) (2014) (“2014 CAF FNPRM”).

⁹ *FCC Guidelines*, 17 FCC Rcd at 19895 (¶ 6).

¹⁰ *Id.*

¹¹ See *OMB Guidelines*, 67 Fed. Reg. at 8460 (¶ V.10) (“‘Reproducibility’ means that the information is capable of being substantially reproduced, subject to an acceptable degree of imprecision”).

employ a specified methodology to determine broadband coverage that will “ensure and maximize the quality, objectivity, utility, and integrity” of the data that it uses to determine MFII support eligibility.¹²

The Joint Proposal.

The Joint Proposal would require carriers to “provide census block speed test results in order to verify required LTE service level coverage.”¹³ The required information would be compiled using “device-based speed-test applications, drive tests, or transmitter monitoring reports that meet ... specified requirements.”¹⁴ The carrier would have to prove that a census block is LTE-covered by submitting a map in a Commission-required shapefile format that displays signal coverage and transmitter sites.¹⁵ The carrier also would be required to provide proof of coverage either as measured download speed test data (showing an average download speed of at least 5 Mbps) conforming to speed test specifications,¹⁶ or as data collected from transmitter monitoring software capable of recording the latitude and longitude of actual device use at a granularity no greater than by 50-meter BIN.¹⁷

LLGS Carriers have not completed an evaluation of the Joint Proposal. However, even a cursory examination of the methodology proposed for application-based testing reveals that it would be impossible to complete within sixty days. Before testing, a map of proposed testing locations must be prepared to comply with the location requirements within each block. For each census block, to test four carriers, a tester must do 3 locations x 5 tests at each x 4 carriers = 60 individual tests at each block. Even testing two possible carriers in a block requires 30 individual tests.

In Oregon, there are just under 200,000 blocks.¹⁸ If 10,000 blocks are at issue (about 5%) in rural areas, 60 tests per block would entail 600,000 tests for four carriers, and 300,000 tests for two carriers. To identify other carriers’ coverage, to map three test locations within each

¹² *FCC Guidelines*, 17 FCC Rcd at 19894.

¹³ *See Feb. 9 Letter* at 6 (¶ D.3).

¹⁴ *Id.*

¹⁵ *See id.* (¶ D.4.a).

¹⁶ *See id.* at 7 (¶ D.4.b.1).

¹⁷ *See id.* (¶ D.4.b.ii).

¹⁸ U.S. Census Bur., *Census Block Tallies by State or State Equivalent* (“Census Block Tallies”), https://www.census.gov/geo/maps-data/data/tallies/census_block_tally.html.

block, to perform 60 tests, and to record the data and exceptions, is estimated to take at least one hour per block. If 30 individual tests per block are required, the time needed is reduced only marginally, as the mapping and travel times are not reduced.¹⁹ Accordingly, testing 10,000 blocks is estimated to take, at a minimum, 1,111 nine-hour shifts of work. LLGS Carriers estimate that the high-resolution files needed to substantiate a challenge will take as long to process as it takes to test. Accordingly, in a sixty-day challenge process, testing must be completed within 30 days, to allow 30 days for processing and submission to the FCC.²⁰

Completing substantial drive testing and reporting data within 60 days presents different issues. For example, Pine Cellular Phones devoted nearly six months to test, compile and submit six Auction 901 areas. Put simply, small carriers do not have anywhere near the physical resources needed to test thousands of census blocks or drive test a substantial portion of their rural service areas, pursuant to the regime envisioned by the Joint Proposal.

Recommendation.

Instead of relying on demonstrably inaccurate data that does not meet the standards set forth in the *OMB Guidelines*, and moving forward with a last-minute proposal that has not been the subject of any public comment and examination, the Commission should move quickly to adopt a data improvement process that prescribes: (1) the filing of improved Form 477 data that is reproducible so that LTE coverage can be verified, (2) the format for submitting data, and (3) the procedures that the carriers must follow.

Indeed, such a prescription is necessary and critically important to ensure the reliability of the data upon which the Commission will designate the areas eligible for MFII support, to correct the deficiencies in the Form 477 data, and to disseminate LTE-coverage information that meets the standards of the *OMB Guidelines*. The application-based testing protocol has salutary components and should be included as part of the data improvement process described above, with the testing protocol more carefully and effectively taking into account the size of the burden being placed on challengers.

LLGS Carriers suggest that the Commission adopt data improvement requirements both as a component of the MFII challenge process and as an amendment to its Form 477 data program.²¹ In either case, any data improvement requirements adopted by the Commission will

¹⁹ In rural areas, the blocks to be tested can be hundreds of miles from a company's headquarters, adding substantial time each day to the testing regime.

²⁰ Nor is Oregon unique. There are 253,000 blocks in Wisconsin, 135,000 in West Virginia, 269,000 in Oklahoma, 238,600 in Kansas, 171,800 in Mississippi, 161,700 in Kentucky, 196,000 in Washington, 86,200 in Wyoming, and 77,200 in Puerto Rico. See *Census Block Tallies*.

²¹ See *Modernizing the FCC Form Data Program*, 28 FCC Rcd 9887 (2013) ("*Form 477 Data Program*").

constitute rules under the Administrative Procedure Act (“APA”).²² Moreover, the prescription of data improvement requirements for the MFII challenge process and the Form 477 data program will change the substantive standards by which the Commission determines the areas that are eligible for MFII support. Accordingly, the adoption of such requirements will require the Commission to comply with the notice-and-comment requirements of APA.²³

Whereas the Commission has delegated authority to the Wireline Competition Bureau (“Bureau”) to develop and administer reporting requirements for telecommunications carriers,²⁴ including the Form 477 requirements,²⁵ it cannot authorize the Bureau to promulgate substantive rules without complying with the notice-and-comment requirements of the APA. Because the Commission has provided no notice that it was considering the adoption of a data improvement process, the Commission must issue a further notice of proposed rulemaking that solicits comments on the Joint Proposal before it can adopt such a proposal. Likewise, a further notice of proposed rulemaking is required to improve the Form 477 data program and to modify the instructions to Form 477.²⁶

Respectfully submitted,



David LaFuria
Counsel for LLGS Carriers

²² See 5 U.S.C. § 551(4).

²³ See *id.* § 553; *Reeder v. FCC*, 865 F.2d 1298, 1305 (D.C. Cir. 1989) (notice and comment required for rules that changed the substantive criteria for evaluating station allotment counterproposals).

²⁴ See 47 C.F.R. § 0.91(f).

²⁵ See *Form 477 Data Program*, 28 FCC Rcd at 9888-89 (¶ 5).

²⁶ See 47 C.F.R. § 43.11(a) (requiring CMRS providers to file Form 477s in accordance with the Commission’s rules and the instructions to the Form 477).